

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7443 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

d MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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BABUBHAI M PATEL

Versus

SHARDABEN J PATEL

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Appearance:

MR RAJNI H MEHTA for Petitioners

MR HM PARIKH for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.D.DAVE

Date of decision: 04/09/96

ORAL JUDGEMENT

Per: Dave, J:-

The Appeal arises out of the award made by the learned MAC Tribunal at Nadiad. The case put forth by

the claimants was that, they are the heirs & legal representatives of deceased Jashbhai Patel, who had died during the motor vehicular accident, which had occurred on April 02, 1987. The claimants had asked for the compensation in sum of Rs. 6,00,000-00 together with the interest from the Respondents.

The case of the claimants came to be challenged by the otherside mainly on two counts. Firstly it was sought to be suggested that the driver of the vehicle cannot be said to be rash and negligent in driving the vehicle. The second challenge posed was regarding the quantum of compensation which the claimants would be entitled. The Tribunal any how has taken the view that the respondents would be liable to pay the compensation. So far as the question of quantum of compensation is concerned, the Tribunal was of the view that the deceased was working as a teacher in a school and used to earn an amount of Rs. 2,600-00 per month. The Tribunal has also accepted the case of the claimants that the deceased was doing some supervisory work- qua the agricultural land and had some income from it. The case of the claimants regarding the income of the deceased from private tuitions also came to be accepted in part by the learned Tribunal. Taking all these sources of income, the Tribunal was of the opinion that, ultimately the deceased could have started to earn an amount of Rs. 3,500-00 while working as a teacher and he could have got certain other retirement benefits also. It is on this basis that the Tribunal was of the opinion that the claimants should get the total compensation in sum of Rs. 4,29,000-00 from the opponents no. 1, 2 & 3, together with the interest at the rate of 12 percent per annum. The above said award made by the learned Tribunal on September 15, 1995, is on a challenge before us.

Upon hearing learned counsels for the parties, we feel that the award made by the Tribunal is on a higher side and it requires to be suitably modified. Learned counsel for the original claimants could not pin point any evidence on the basis of which the income from some work that the deceased used to do in the agricultural land could be justified. Moreover, it appears to us that there has been some error made by the Tribunal in deciding the question regarding the future economic loss on the basis of the increase in income. After hearing learned counsels of the parties on this question for quite some time, we are of the opinion that the income of the deceased should be taken as Rs. 4,500-00 per month. Deducting an amount of Rs. 1,500-00 which would be equivalent to 1/3rd. for the personal expenses of the

deceased, the dependency benefit would come to Rs.3,000-00 per month and the yearly loss would come to Rs.36,000-00. Adopting the multiplier of eight, as accepted by the Tribunal, the figure would be in sum of Rs.2,88,000-00. We do not propose to disturb rest of the part of the award. Therefore the claimants should be entitled to an amount of Rs.20,000-00 on the head of loss of expectation of life. Rs.20,000-00 should also become payable on the head of loss of consortium. Remaining amount of Rs.5,000-00 on three different heads also does not require to be disturbed. Therefore in our opinion the total compensation which would become awardable is 3,33,000-00 , which the claimants should get from the opponents, together with the interest at the rate of 12 % per annum from the date of application till realisation. The disbursement should be made on the basis adopted by the Tribunal.

Thus the Appeal stands allowed in part. The award made by the Tribunal shall stand modified accordingly.

An amount of Rs.25,000-00 has been deposited with this Court. The said amount should be transmitted to the Tribunal. The remaining amount shall be deposited by the Insurance Company within a period of six weeks hereof.

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